

Message

From: Hanson, Robyn [Hanson.Robyn@epa.gov]
Sent: 5/19/2021 4:38:57 PM
To: Cathy Laughner [cathyl@bkbh.com]; Llamozas, Emilio [Llamozas.Emilio@epa.gov]; Garcia, Al [garcia.al@epa.gov]
CC: Thomas Jodoin [TJODOIN@helenamt.gov]
Subject: RE: Helena and Ft. Harrison
Attachments: City of Helena: Proposed AOC with EPA Regarding CWA Pretreatment Program; RE: City of Helena Pretreatment Settlement Discussions - Request for Next Meeting Date

Cathy,

We disagree with many of your characterizations, including: that our proposed AOC (first offered in writing on November 25, 2020, and updated on April 29, 2021, despite the City's failure to propose a comprehensive redline) does not fairly and accurately reflect facts; that the EPA is somehow responsible for the City's longstanding non-compliance with the CWA and its implementing pretreatment regulations; or that the EPA has failed to be forthright and timely about the factual and legal support for our various non-compliance allegations and how those allegations have evolved. I am also quite troubled by your inaccurate accusation that we "started off on the wrong foot unfortunately without counsel for the City present during the initial AOC negotiation," as Thomas Jodoin, an attorney for the City of Helena, solely represented the City's interests before you were hired by the City as its outside counsel. Thomas participated in meetings and email exchanges leading up to the first AOC proposal, directly received the first AOC proposal, and initially insisted that he remain my main legal point of contact for the City on AOC negotiations even after he notified me that you were hired as outside counsel in January. See the attached email records to recall this history of the City's legal representation.

Given the tone and statements in your below email, we will refrain from rebutting each of your mischaracterizations with complete and accurate facts. The records speak for themselves, and it is clear to us that such an exercise would not be productive.

For nearly a year now, we have attempted to negotiate with the City of Helena, in good faith, a fair and appropriate administrative resolution under the CWA. Leading up to these negotiations, and continuing throughout, EPA has offered the City extensive compliance assistance. We also extended our initially envisioned timeframe for pre-filing administrative negotiations on your (and, before you, Thomas') representation that the City was interested in pursuing a cooperative, consent-based resolution, but needed additional time to consider our allegations and respond to our proposals. As recently as our meeting on April 29, 2021, we queried you on whether the City remained interested in continuing settlement negotiations and you asked that we continue with the process by sending the City a revised AOC proposal and corresponding administrative penalty offer. After we finished discussing the content of the revised AOC, EPA verbally conveyed the administrative penalty settlement offer as contingent on entry of an AOC, and we described that the penalty amount would be memorialized in a separate administrative consent agreement. That same day, we emailed the City our complete settlement proposal in writing, and we requested the City's commitment to accept the terms of the provided revised AOC and the administrative penalty amount on or before May 21, 2021. Although we received authorization from designated EPA officials on Monday to send you a proposed draft consent agreement including the administrative penalty amount, we did not send that draft for your consideration after your below Monday morning email communicated to us that the City was completely rejecting our proposed revised AOC and any corresponding settlement penalty amount.

While the City has every right to decide at this juncture to refuse EPA's pre-filing settlement attempts, such a refusal does not mean we will ignore the City's extensive history of noncompliance with the CWA's pretreatment regulations and the City's issued and effective MPDES permit, or the City's continuing noncompliance. We have an enforcement obligation to the American public we serve to ensure that the City of Helena is held accountable for its failure to comply with the CWA and institutes appropriate actions to achieve compliance.

As such, I am notifying you that we consider the City to have terminated pre-filing administrative settlement negotiations through your below email rejecting our settlement offers. We understand that the City currently has no remaining interest in pursuing a consent-based resolution here. Consistent with messages we have conveyed in the past, we will now turn our resources and efforts towards seeking approval from authorized government officials to pursue alternate enforcement approaches, which may include the issuance of a unilateral compliance order and filing of an administrative or judicial complaint under the authority of the CWA.

Regards,
Robyn

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402.0044.2020_HelenaWWTP

From: Cathy Laughner <cathyl@bkbh.com>
Sent: Monday, May 17, 2021 10:03 AM
To: Hanson, Robyn <Hanson.Robyn@epa.gov>; Llamozas, Emilio <Llamozas.Emilio@epa.gov>; Garcia, Al <garcia.al@epa.gov>
Cc: Thomas Jodoin <TJODOIN@helenamt.gov>
Subject: RE: Helena and Ft. Harrison

Robyn,
Your paragraph 118 concerns Ft. Harrison.

The City has completed the tasks of the 2020 Letter of Violation and audit that could be completed and continues to believe it is in compliance with the pretreatment regulations. The City is waiting for EPA to act (if warranted), on the following submittals: local limits, MRL permit, Ft. Harrison MOU Addendum, and the designated pretreatment coordinator.

The AOC proposed on 4/29/2021 does not fairly and accurately reflect the facts. Omitted are the many steps the City has taken to try and satisfy EPA. In addition, as expressed in my 4/19/2021 email, the City cannot sign up for things it cannot do or are above and beyond the pretreatment regulations or permit.

Moreover, it is my observation that in some instances EPA faulted the City for non-compliance when EPA dropped the ball. An example is the revised draft MRL permit that the City provided to EPA on 12/17/2020. During the 1/21/2021 conference call, EPA did not even acknowledge that it had the revised permit in hand, and then EPA further failed to provide any comments until 4/29/2021. The comments it did provide, after five months, were to correct typos. Another example is the draft sampling and analysis plan. The City provided a revised plan on 8/31/2020 and EPA failed to communicate any alleged deficiencies until Thursday, 4/29/2021. The AOC is unacceptable and no penalty should be assessed. There has been no economic benefit to the City or harm to the environment. To us, the 37 page unwieldy AOC document fails to serve a useful purpose and is unnecessarily punitive. Considering all of the facts and circumstances, it would be grossly unjust if EPA issues this AOC or a UAO.

Looking back things started off on the wrong foot unfortunately without counsel for the City present during the initial AOC communication.

Catherine Laughner

From: Hanson, Robyn <Hanson.Robyn@epa.gov>
Sent: Friday, May 14, 2021 3:45 PM
To: Cathy Laughner <cathyl@bkbh.com>; Llamozas, Emilio <Llamozas.Emilio@epa.gov>; Garcia, Al <garcia.al@epa.gov>
Cc: Thomas Jodoin <TJODOIN@helenamt.gov>
Subject: RE: Helena and Ft. Harrison

Cathy,

As my reply indicates, we may. But we first seek an explanation from the City on the unexplained decision to remove DVA from the draft agreement. Please provide that information. Once you do, I can revisit your question about whether EPA has any substantive comments.

Robyn

From: Cathy Laughner <cathyl@bkbh.com>
Sent: Friday, May 14, 2021 3:38 PM
To: Hanson, Robyn <Hanson.Robyn@epa.gov>; Llamozas, Emilio <Llamozas.Emilio@epa.gov>; Garcia, Al <garcia.al@epa.gov>
Cc: Thomas Jodoin <TJODOIN@helenamt.gov>
Subject: RE: Helena and Ft. Harrison

Robyn,
Does EPA have any substantive comments on the draft I sent you on May 6?
Thank you.

Catherine Laughner

From: Hanson, Robyn <Hanson.Robyn@epa.gov>
Sent: Tuesday, May 11, 2021 8:58 AM
To: Cathy Laughner <cathyl@bkbh.com>; Llamozas, Emilio <Llamozas.Emilio@epa.gov>; Garcia, Al <garcia.al@epa.gov>
Cc: Thomas Jodoin <TJODOIN@helenamt.gov>
Subject: RE: Helena and Ft. Harrison

CAUTION: EXTERNAL EMAIL

Cathy,

We have reviewed the updated draft document. The revisions are promising; however, before we can comment on whether it serves to secure the complete legal authority required under 40 CFR § 403.8(f)(1), we seek an explanation of why DVA is not included as a contributing jurisdiction and signatory entity that, like DMA, would recognize the City's authority under 40 CFR § 403.8(f)(1)?

DVA was a signatory to the original MOU and DVA was recently contemplated as a party in the last draft addendum that you provided for our comments back in March. EPA's previous conversations with the City led us to understand that both entities (DVA and DMA) comprise the outside contributing jurisdiction.

What prompted the change to have the terms of the MOU addendum only agreed to by DMA and the City? Does DVA not have authority over contributions to the City's POTW independent from DMA?

Thanks,
Robyn

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402.0044.2020_HelenaWWTP

From: Hanson, Robyn
Sent: Thursday, May 6, 2021 3:53 PM
To: Cathy Laughner <cathyl@bkbh.com>; Llamozas, Emilio <Llamozas.Emilio@epa.gov>; Garcia, Al <garcia.al@epa.gov>
Cc: Thomas Jodoin <TJODOIN@helenamt.gov>
Subject: RE: Helena and Ft. Harrison

Cathy,

Thank you for this update. EPA will review the revised draft MOU and get back to you next week. I am out of the office tomorrow and will not be able to review it today due to other commitments for the remainder of this afternoon.

Regards,
Robyn

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402.0044.2020_HelenaWWTP

From: Cathy Laughner <cathyl@bkbh.com>
Sent: Thursday, May 6, 2021 3:14 PM
To: Hanson, Robyn <Hanson.Robyn@epa.gov>; Llamozas, Emilio <Llamozas.Emilio@epa.gov>; Garcia, Al <garcia.al@epa.gov>
Cc: Thomas Jodoin <TJODOIN@helenamt.gov>
Subject: Helena and Ft. Harrison

Robyn,
Yesterday Major Marquis who is representing Ft. Harrison provided the City with a revised draft MOU addendum. Thomas and I have reviewed it and believe it meets the requirements of 40 CFR 403.8(f)(1). If EPA does not, would you please let me know before the end of the week. This MOU document would be in addition to the current enforcement ordinance 6-4-3.

Catherine Laughner

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